

Short Title: GSC Uniform Public Expression Protection Act.

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM PUBLIC EXPRESSION PROTECTION ACT.

The General Assembly of North Carolina enacts:

**PART I. UNIFORM PUBLIC EXPRESSION PROTECTION ACT**

*[Staff Note: Redlining in this Part represents changes to the Uniform Act, not current law. GSC staff also made non-redlined changes to conform to the General Statutes numbering system and convention of capitalizing only the first word in a G.S. section catchline.]*

**SECTION 1.** Chapter 1 of the General Statutes is amended by adding a new article

to read:

"Article 54.

"Uniform Public Expression Protection Act.

**"§ 1-671. Short title.**

This ~~act~~ Article may be cited as the Uniform Public Expression Protection Act.

**"§ 1-672. Scope.**

(a) In this ~~section~~ section, the following definitions apply:

(1) ~~"Goods or services" does~~ Goods or services. – Does not include the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.

(2) ~~"Governmental unit" means a~~ Governmental unit. – A public corporation or government or governmental subdivision, agency, or instrumentality.

(3) ~~"Person" means an~~ Person. – An individual, estate, trust, partnership, business or nonprofit entity, governmental unit, or other legal entity.

(b) Except as otherwise provided in subsection ~~(e)~~, (c) of this section, this ~~act~~ Article applies to a [cause of action] asserted in a civil action [or special proceeding] against a person based on ~~the person's~~ any of the following:

(1) The person's communication in a legislative, executive, judicial, administrative, or other governmental ~~proceeding~~ proceeding.

(2) The person's communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental ~~proceeding~~ or proceeding.

(3) The person's exercise of the right of freedom of speech or of the press, the right to assemble or petition, or the right of association, guaranteed by the United States Constitution or ~~[cite to the state's constitution]~~ North Carolina Constitution, on a matter of public concern.

(c) This ~~act~~ Article does not apply to a ~~[cause of action] asserted~~ any of the following [causes of action]:

(1) A [cause of action] against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official ~~capacity~~ capacity.

(2) A [cause of action] by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health ~~or safety~~ or safety.

(3) A [cause of action] against a person primarily engaged in the business of selling or leasing goods or services if the [cause of action] arises out of a communication related to the person's sale or lease of the goods or services.

*[Legislative Note: If a state does not use the term "cause of action", the state should use its comparable term, such as "claim for relief" in subsections (b) and (c). The state also should substitute its comparable term for the term "[cause of action]" in Sections 3, 4(f), 7, 13, and 14.]*

*[Staff Note: GSC staff recommends the term "cause of action." GSC staff also recommends that "special proceeding" be mentioned after "civil action." Please see G.S. 1-1:*

**"§ 1-1. Remedies.**

*Remedies in the courts of justice are divided into –*

*(1) Actions.*

*(2) Special proceedings."]*

**"§ 1-673. Special motion for expedited relief.**

Not later than [60] days after a party is served with a [complaint] [petition], crossclaim, counterclaim, third-party claim, or other pleading that asserts a [cause of action] to which this ~~act~~ Article applies, or at a later time on a showing of good cause, the party may file a special motion for expedited relief to [dismiss] [strike] the [cause of action] or part of the [cause of action].

*[Legislative Note: A state should use the term "complaint" or "petition", or both, to describe any procedural means by which a cause of action may be asserted.*

*A state should title its motion one to "dismiss" or "strike" in accordance with its procedures and customs. The state also should substitute its term for the term "[dismiss] [strike]" in Section 7(a).*

*A state may need to amend its statutes or rules of civil procedure to prevent a motion under this section from being considered a first pleading or motion that waives a defense or precludes the filing of another pleading or motion.]*

*[Staff Note: GSC staff recommends including both the term "complaint" for civil actions and the term "petition" for special proceedings and recommends the term "dismiss" instead of "strike." Under North Carolina Rule of Civil Procedure 12, a defendant must answer within 30 days of service of the complaint.]*

**"§ 1-674. Stay.**

(a) Except as otherwise provided in subsections (d) through ~~(g)~~ (g) of this section, on the filing of a motion under ~~Section 3:~~ G.S. 1-673, all of the following apply:

(1) ~~all~~ All other proceedings between the moving party and responding party, including discovery and a pending hearing or motion, are ~~stayed~~ and stayed.

(2) ~~on~~ On motion by the moving party, the court may stay a hearing or motion involving another party, or discovery by another party, if the hearing or ruling

on the motion would adjudicate, or the discovery would relate to, an issue material to the motion under ~~Section 3~~, G.S. 1-673.

(b) A stay under subsection (a) of this section remains in effect until entry of an order ruling on the motion under ~~Section 3~~, G.S. 1-673 and expiration of the time under ~~Section 9~~ G.S. 1-679 for the moving party to appeal the order.

(c) Except as otherwise provided in subsections (e), (f), and ~~(g)~~, (g) of this section, if a party appeals from an order ruling on a motion under ~~Section 3~~, G.S. 1-673, all proceedings between all parties in the action are stayed. The stay remains in effect until the conclusion of the appeal.

(d) During a stay under subsection ~~(a)~~, (a) of this section, the court may allow limited discovery if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden under ~~Section 7(a)~~, G.S. 1-677(a) and the information is not reasonably available unless discovery is allowed.

(e) A motion under ~~Section 10~~, G.S. 1-680 for costs, attorney's fees, and expenses is not subject to a stay under this section.

(f) A stay under this section does not affect a party's ability voluntarily to [dismiss] [nonsuit] a [cause of action] or part of a [cause of action] or move to [sever] a [cause of action].

(g) During a stay under this section, the court for good cause may hear and rule ~~on~~ on the following motions:

(1) ~~a~~ A motion unrelated to the motion under ~~Section 3~~; and G.S. 1-673.

(2) ~~a~~ A motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety.

*[Legislative Note: In subsection (f), a state should use the term "dismiss" or "nonsuit" in accordance with its procedures and customs. The state also should substitute its term for the term "[dismiss] [nonsuit]" in Section 7(b) and (c).]*

*If a state does not use the term "sever" to describe a motion to sever, the state should use its comparable term in subsection (f).]*

*[Staff Note: GSC staff recommends "dismiss," instead of "nonsuit." ]*

**"§ 1-675. Hearing.**

(a) The court shall hear a motion under ~~Section 3~~ G.S. 1-673 not later than [60] days after filing of the motion, unless the court orders a later ~~hearing~~; hearing for any of the following reasons:

(1) ~~to~~ To allow discovery under ~~Section 4(d)~~; or G.S. 1-674(d)

(2) ~~for~~ For other good cause.

(b) If the court orders a later hearing under ~~subsection (a)(1)~~, subdivision (a)(1) of this section, the court shall hear the motion under ~~Section 3~~ G.S. 1-673 not later than [60] days after the court order allowing the discovery, unless the court orders a later hearing under ~~subsection (a)(2)~~; subdivision (a)(2) of this section.

**"§ 1-676. Proof.**

In ruling on a motion under ~~Section 3~~, G.S. 1-673, the court shall consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment under ~~[cite to the state's statute or rule governing summary judgment]~~; G.S. 1A-1, Rule 56.

**"1-677. [Dismissal of] [Striking] cause of action in whole or part.**

(a) In ruling on a motion under ~~Section 3~~, G.S. 1-673, the court shall [dismiss] [strike] with prejudice a [cause of action], or part of a [cause of action], ~~if~~; if all of the following are true:

(1) ~~the~~ The moving party establishes under ~~Section 2(b)~~ G.S. 1-672(b) that this ~~[act] applies~~; Article applies.

(2) ~~the~~ The responding party fails to establish under ~~Section 2(c)~~ G.S. 1-672(c)  
that this ~~[act]~~ Article does not ~~apply~~; and apply.

(3) ~~either~~; Any of the following:

a. ~~the~~ The responding party fails to establish a prima facie case as to each  
essential element of the ~~[cause of action]; or~~ action.

b. ~~the~~ The moving party establishes ~~that~~; any of the following:

1. ~~the~~ The responding party failed to state a [cause of action] upon  
which relief can be ~~granted~~; or granted.

2. ~~there~~ There is no genuine issue as to any material fact and the  
moving party is entitled to judgment as a matter of law on the  
[cause of action] or part of the [cause of action].

(b) A voluntary [dismissal] [nonsuit] without prejudice of a responding party's [cause of  
action], or part of a [cause of action], that is the subject of a motion under ~~Section 3~~ G.S. 1-673  
does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney's  
fees, and expenses under ~~Section 10~~; G.S. 1-680.

(c) A voluntary [dismissal] [nonsuit] with prejudice of a responding party's [cause of  
action], or part of a [cause of action], that is the subject of a motion under ~~Section 3~~ G.S. 1-673  
establishes for the purpose of ~~Section 10~~ G.S. 1-680 that the moving party prevailed on the  
motion.

*[Staff Note: GSC staff recommends "dismiss," instead of "strike," and "dismissal," instead of  
"nonsuit."]*

**"§ 1-678. Ruling.**

The court shall rule on a motion under ~~Section 3~~ G.S. 1-673 not later than [60] days after a  
hearing under ~~Section 5~~; G.S. 1-675.

**"§ 1-679. Appeal.**

A moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under ~~Section 3.~~ G.S. 1-673. The appeal must be filed not later than [21] days after entry of the order.

*[Legislative Note: A state should insert a time to appeal consistent with other interlocutory appeals.*

*This section may require amendment of a state's interlocutory appeal statute or court rule.]*

*[Staff Note: North Carolina Rule of Appellate Procedure 3 provides:*

***Rule 3. Appeal in Civil Cases—How and When Taken***

(a) *Filing the Notice of Appeal.* Any party entitled by law to appeal from a judgment or order of a superior or district court rendered in a civil action or special proceeding may take appeal by filing notice of appeal with the clerk of superior court and serving copies thereof upon all other parties within the time prescribed by subsection (c) of this rule.

(b) *Special Provisions.* Appeals in the following types of cases shall be taken in the time and manner set out in the General Statutes and Rules of Appellate Procedure sections noted:

(1) *Juvenile matters pursuant to N.C.G.S. § 7B-2602.*

(2) *Appeals pursuant to N.C.G.S. § 7B-1001 shall be subject to the provisions of Rule 3.1.*

(c) *Time for Taking Appeal.* In civil actions and special proceedings, a party must file and serve a notice of appeal:

(1) *within thirty days after entry of judgment if the party has been served with a copy of the judgment within the three-day period prescribed by Rule 58 of the Rules of Civil Procedure; or*

(2) *within thirty days after service upon the party of a copy of the judgment if service was not made within that three-day period; provided that*

(3) *if a timely motion is made by any party for relief under Rules 50(b), 52(b) or 59 of the Rules of Civil Procedure, the thirty-day period for taking appeal is tolled as to all parties until entry of an order disposing of the motion and then runs as to each party from the date of entry of the order or its untimely service upon the party, as provided in subdivisions (1) and (2) of this subsection (c).*

*In computing the time for filing a notice of appeal, the provision for additional time after service by mail in Rule 27(b) of these rules and Rule 6(e) of the Rules of Civil Procedure shall not apply.*

*If timely notice of appeal is filed and served by a party, any other party may file and serve a notice of appeal within ten days after the first notice of appeal was served on such party.*

(d) *Content of Notice of Appeal.* The notice of appeal required to be filed and served by subsection (a) of this rule shall specify the party or parties taking the appeal; shall designate the judgment or order from which appeal is taken and the court to which appeal is taken; and shall be signed by counsel of record for the party or parties taking the appeal, or by any such party not represented by counsel of record.

(e) *Service of Notice of Appeal. Service of copies of the notice of appeal may be made as provided in Rule 26."]*

**"§ 1-680. Costs, attorney's fees, and expenses.**

On a motion under ~~Section 3, G.S. 1-673,~~ the court shall award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the ~~motion;~~ motion as follows:

(1) ~~to~~ To the moving party if the moving party prevails on the ~~motion;~~ or motion.

(2) ~~to~~ To the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

**"§ 1-681. Construction.**

This ~~fact~~ Article must be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or ~~[cite to the state's constitution].~~ North Carolina Constitution.

**"§ 1-682. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it."

*[Staff Note: In its memo, the Duke Law First Amendment Clinic suggests that the General Statutes Commission might consider adding a section comparable to the following Texas statute: § 27.0075. Effect of Ruling.*

*Neither the court's ruling on the motion nor the fact that it made such a ruling shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by the ruling.*  
*Tex. Civ. Prac. & Rem. Code § 27.0075.]*

**PART II. CONFORMING CHANGES**



*[Legislative Note: Section 9 may require amendment of a state's interlocutory appeal statute or court rule.*

*A state may need to amend its statutes or rules of civil procedure to prevent a motion under this act from being considered a first pleading or motion that waives a defense or precludes the filing of another pleading or motion.]*

**SECTION 2.(a)** G.S. 1A-1, Rule 12, reads as rewritten:

**"Rule 12. Defenses and objections; when and how presented; by pleading or motion; motion for judgment on pleading.**

(a) (1) When Presented. – A defendant shall serve ~~his~~the defendant's answer within 30 days after service of the summons and complaint upon ~~him~~the defendant. A party served with a pleading stating a crossclaim against ~~him~~the party shall serve an answer ~~thereto to it~~ within 30 days after service upon ~~him~~the party. The plaintiff shall serve ~~his~~the plaintiff's reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. Service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court:

a. The responsive pleading shall be served within 20 days after notice of the court's action in ruling on the motion or postponing its disposition until the trial on the ~~merits~~merits.

b. If the court grants a motion for a more definite statement, the responsive pleading shall be served within 20 days after service of the more definite statement.

(2) Cases Removed to United States District Court. – Upon the filing in a district court of the United States of a petition for the removal of a civil action or proceeding from a court in this State and the filing of a copy of the petition in the State court, the State court shall proceed no further ~~therein~~in the case

1 unless and until the case is remanded. If it ~~shall be~~ is finally determined in the  
2 United States courts that the action or proceeding was not removable or was  
3 improperly removed, or for other reason should be remanded, and a final order  
4 is entered remanding the action or proceeding to the State court, the defendant  
5 or defendants, or any other party ~~who~~ that would have been permitted or  
6 required to file a pleading had the proceedings to remove not been instituted,  
7 shall have 30 days after the filing in ~~such~~ the State court of a certified copy of  
8 the order of remand to file motions and to answer or otherwise plead.

9 (b) How Presented. – Every defense, in law or fact, to a claim for relief in any pleading,  
10 whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the  
11 responsive pleading ~~thereto~~ to it if one is required, except that the following defenses may at the  
12 option of the pleader be made by motion:

- 13 (1) Lack of jurisdiction over the subject ~~matter~~, matter.  
14 (2) Lack of jurisdiction over the ~~person~~, person.  
15 (3) Improper venue or ~~division~~, division.  
16 (4) Insufficiency of ~~process~~, process.  
17 (5) Insufficiency of service of ~~process~~, process.  
18 (6) Failure to state a claim upon which relief can be ~~granted~~, granted.  
19 (7) Failure to join a necessary party.  
20 (8) A special motion for expedited relief under G.S. 1-673.

21 A motion making any of these defenses shall be made before pleading if a further pleading is  
22 permitted. The consequences of failure to make ~~such a~~ the motion ~~shall be~~ is as provided in  
23 ~~sections (g) and (h)~~, subsections (g) and (h) of this section. No defense or objection is waived by  
24 being joined with one or more other defenses or objections in a responsive pleading or motion.  
25 Obtaining an extension of time within which to answer or otherwise plead ~~shall~~ does not

1 constitute a waiver of any defense ~~herein set forth.~~ set forth in this subsection. If a pleading sets  
2 forth a claim for relief to which the adverse party is not required to serve a responsive pleading,  
3 ~~he the adverse party~~ may assert at the trial any defense in law or fact to that claim for relief. If,  
4 on a motion asserting the defense ~~numbered (6),~~ in subdivision (6) of this subsection, to dismiss  
5 for failure of the pleading to state a claim upon which relief can be granted, matters outside the  
6 pleading are presented to and not excluded by the court, the motion shall be treated as one for  
7 summary judgment and disposed of as provided in G.S. 1A-1, Rule 56, and all parties shall be  
8 given reasonable opportunity to present all material made pertinent to ~~such~~ a motion by  
9 G.S. 1A-1, Rule 56.

10 (c) Motion for ~~judgment~~ Judgment on the ~~pleadings.~~ Pleadings. – After the pleadings  
11 are closed but within such time as not to delay the trial, any party may move for judgment on the  
12 pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are  
13 presented to and not excluded by the court, the motion shall be treated as one for summary  
14 judgment and disposed of as provided in G.S. 1A-1, Rule 56, and all parties shall be given  
15 reasonable opportunity to present all material made pertinent to ~~such~~ a motion by G.S. 1A-1,  
16 Rule 56.

17 (d) Preliminary ~~hearings.~~ Hearings. – The defenses specifically enumerated ~~(1) through~~  
18 ~~(7) in section (b) of this rule,~~ in subsection (b) of this section, whether made in a pleading or by  
19 motion, and the motion for judgment on the pleadings mentioned in ~~section (c) of this rule~~  
20 subsection (c) of this section shall be heard and determined before trial on application of any  
21 party, unless the judge orders that the hearing and determination ~~thereof~~ be deferred until the  
22 trial.

23 (e) Motion for ~~more definite statement.~~ More Definite Statement. – If a pleading to  
24 which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably  
25 be required to frame a responsive pleading, ~~he the party~~ may move for a more definite statement

1 before interposing ~~his~~the party's responsive pleading. The motion shall point out the defects  
2 complained of and the details desired. If the motion is granted and the order of the judge is not  
3 obeyed within 20 days after notice of the order or within such other time as the judge may fix,  
4 the judge may strike the pleading to which the motion was directed or make such orders as ~~he~~  
5 the judge deems just.

6 (f) Motion to ~~strike.~~Strike. — Upon motion made by a party before responding to a  
7 pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party  
8 within 30 days after the service of the pleading upon ~~him~~the party or upon the judge's own  
9 initiative at any time, the judge may order stricken from any pleading any insufficient defense or  
10 any redundant, irrelevant, immaterial, impertinent, or scandalous matter.

11 (g) Consolidation of ~~defenses in motion.~~Defenses in Motion. — A party ~~who~~that makes  
12 a motion under this ~~rule section~~rule section may join with it any other motions ~~herein provided for and then~~  
13 ~~available to him.~~provided in this section and then available to the party. If a party makes a motion  
14 under this ~~rule section~~rule section but omits ~~therefrom~~from it any defense or objection then available to ~~him~~  
15 ~~which~~the party that this ~~rule section~~rule section permits to be raised by motion, ~~he~~the party shall not  
16 thereafter make a motion based on the omitted defense or ~~objection so omitted, objection,~~objection, except  
17 a motion as provided in ~~section (h)(2) hereof~~subdivision (h)(2) of this section on any of the  
18 grounds there stated. A special motion for expedited relief under G.S. 1-673, however, does not  
19 waive any other defense or objection.

20 (h) Waiver or ~~preservation of certain defenses.~~Preservation of Certain Defenses. —

21 (1) A defense of lack of jurisdiction over the person, improper venue,  
22 insufficiency of process, or insufficiency of service of process is waived (i) if  
23 omitted from a motion in the circumstances described in ~~section (g),~~  
24 subsection (g) of this section, or (ii) if it is neither made by motion under this  
25 ~~rule section~~rule section nor included in a responsive pleading or an amendment ~~thereof~~to

it permitted by ~~Rule 15(a)~~ G.S. 1A-1, Rule 15(a), to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a necessary party, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under G.S. 1A-1, Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

**SECTION 2.(b)** G.S. 1A-1, Rule 42, reads as rewritten:

**"Rule 42. Consolidation; separate trials.**

(a) Consolidation. – Except as provided in subdivision (b)(2) of this section, when actions involving a common question of law or fact are pending in one division of the court, the judge may order a joint hearing or trial of any or all the matters in issue in the actions; ~~he the judge~~ may order all the actions consolidated; and ~~he the judge~~ may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay. When actions involving a common question of law or fact are pending in both the superior and the district court of the same county, a judge of the superior court in which the action is pending may order all the actions consolidated, and ~~he the judge~~ may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.

(b) ~~Separate trials.~~ Trials. –

(1) The court may in furtherance of convenience or to avoid prejudice and shall for considerations of venue upon timely motion order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue

or of any number of claims, cross-claims, counterclaims, third-party claims,  
or issues.

(2) Upon motion of any party in an action that includes a claim commenced under  
Article 1G of Chapter 90 of the General Statutes involving a managed care  
entity as defined in G.S. 90-21.50, the court shall order separate discovery and  
a separate trial of any claim, cross-claim, counterclaim, or third-party claim  
against a physician or other medical provider.

(3) Upon motion of any party in an action in tort ~~wherein~~ in which the plaintiff  
seeks damages exceeding one hundred fifty thousand dollars (\$150,000), the  
court shall order separate trials for the issue of liability and the issue of  
damages, unless the court for good cause shown orders a single trial. Evidence  
relating solely to compensatory damages ~~shall not be~~ is not admissible until  
the trier of fact has determined that the defendant is liable. The same trier of  
fact that tries the issues relating to liability shall try the issues relating to  
damages.

(4) Pursuant to G.S. 1-267.1, any facial challenge to the validity of an act of the  
General Assembly, other than a challenge to plans apportioning or  
redistricting State legislative or congressional districts, shall be heard by a  
three-judge panel in the Superior Court of Wake County if a claimant raises  
~~such a~~ the challenge in the claimant's complaint or amended complaint in any  
court in this State, or if ~~such a~~ the challenge is raised by the defendant in the  
defendant's answer, responsive pleading, or within 30 days of filing the  
defendant's answer or responsive pleading. In that event, the court shall, on its  
own motion, transfer that portion of the action challenging the validity of the  
act of the General Assembly to the Superior Court of Wake County for

resolution by a three-judge panel if, after all other matters in the action have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case. The court in which the action originated ~~shall maintain~~ maintains jurisdiction over all matters other than the challenge to the act's facial validity. For a motion filed under ~~Rule 11 or Rule 12(b)(1) through (7),~~ G.S. 1A-1, Rule 11 or Rule 12(b), the original court shall rule on the ~~motion,~~ motion; however, it may decline to rule on a motion that is based solely upon G.S. 1A-1, Rule 12(b)(6). If the original court declines to rule on a ~~Rule 12(b)(6) motion,~~ motion under G.S. 1A-1, Rule 12(b)(6), the motion shall be decided by the three-judge panel. The original court shall stay all matters that are contingent upon the outcome of the challenge to the act's facial validity pending a ruling on that challenge and until all appeal rights are exhausted. Once the three-judge panel has ruled and all appeal rights have been exhausted, the matter shall be transferred or remanded to the three-judge panel or the trial court in which the action originated for resolution of any outstanding matters, as appropriate."

**SECTION 3.** G.S. 7A-27 reads as rewritten:

**"§ 7A-27. Appeals of right from the courts of the trial divisions.**

(a) Appeal lies of right directly to the Supreme Court in any of the following cases:

- (1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.
- (2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary

complex business case pursuant to Rule 2.1 of the General Rules of Practice  
for the Superior and District Courts.

(3) From any interlocutory order of a Business Court Judge that does any of the  
following:

- a. Affects a substantial right.
- b. In effect determines the action and prevents a judgment from which an  
appeal might be taken.
- c. Discontinues the action.
- d. Grants or refuses a new trial.

(4) Any trial court's decision regarding class action certification under G.S. 1A-1,  
Rule 23.

(5) Any order that terminates parental rights or denies a petition or motion to  
terminate parental rights.

(a1) Repealed by Session Laws 2016-125, s. 22(b), 4th Ex. Sess., effective December 1,  
2016.

(b) Except as provided in subsection (a) of this section, appeal lies of right directly to the  
Court of Appeals in any of the following cases:

(1) From any final judgment of a superior court, other than one based on a plea of  
guilty or nolo contendere, including any final judgment entered upon review  
of a decision of an administrative agency, except for a final judgment entered  
upon review of a court martial under G.S. 127A-62.

(2) From any final judgment of a district court in a civil action.

(3) From any interlocutory order or judgment of a superior court or district court  
in a civil action or proceeding that does any of the following:

- a. Affects a substantial right.



- b. In effect determines the action and prevents a judgment from which an appeal might be taken.
- c. Discontinues the action.
- d. Grants or refuses a new trial.
- e. Determines a claim prosecuted under G.S. 50-19.1.
- f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action.
- g. Denying, in whole or in part, a special motion for expedited relief under G.S. 1-673.

(4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

### **PART III. [SEVERABILITY AND] EFFECTIVE DATE**

**[SECTION #.** This [act] does not affect a [cause of action] asserted before [the effective date of this [act]] in a civil action or a motion under [cite to the state's current anti-SLAPP law] regarding the [cause of action].]

*[Legislative Note: A state should include this section if the state has an existing procedure for a special motion for expedited relief that is being repealed because this act replaces it.]*

*[Staff Note: GSC staff recommends not including this section because North Carolina does not currently have an anti-SLAPP law.]*

[SECTION #. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

*[Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.]*

*[Staff Note: Please see the following excerpt from Pope v. Easley, 354 N.C. 544, 548, 556 S.E.2d 265, 268 (2001):*

*"The test for severability is whether the remaining portion of the legislation can stand on its own and whether the General Assembly would have enacted the remainder absent the offending portion. See, e.g., Jackson v. Guilford Cty. Bd. of Adjust., 275 N.C. 155, 168, 166 S.E.2d 78, 87 (1969) ("When the statute, ... [can] be given effect had the invalid portion never been included, it will be given such effect if it is apparent that the legislative body, had it known of the invalidity of the one portion, would have enacted the remainder alone."). Additionally, the inclusion of a severability clause within legislation will be interpreted as a clear statement of legislative intent to strike an unconstitutional provision and to allow the balance to be enforced independently. Fulton Corp. v. Faulkner, 345 N.C. 419, 421, 481 S.E.2d 8, 9 (1997)."]*

**SECTION #.** This act becomes effective [October 1, 2022], and applies to a civil action [or special proceeding] filed or [cause of action] asserted in a civil action [or special proceeding] on or after [the effective date of this [act]].

*[Staff Note: GSC staff recommends that "special proceeding" be mentioned after "civil action." Please see G.S. 1-1:*

*"§ 1-1. Remedies.*

*Remedies in the courts of justice are divided into –*

*(1) Actions.*

*(2) Special proceedings."]*